

STATE OF ILLINOIS



Department of Financial and Professional Regulation Division of Insurance

IN THE MATTER OF THE
REVOCATION OF LICENSING
AUTHORITY OF:

RICHARD EUGENE LUTES
P.O. BOX 144
TISKILWA, ILLINOIS 61368

HEARING NO. 05-HR-0413

ORDER

I, Michael T. McRaith, the undersigned Director of Insurance for the State of Illinois, hereby certify that I have read the attached Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer who was appointed and designated pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402) to conduct a hearing into the above-captioned matter.

I, Michael T. McRaith, have carefully considered and reviewed the Hearing Officer's Findings, Conclusions, and Recommendations that are attached hereto and made a part hereof.

I, Michael T. McRaith, the undersigned Director of Insurance, being duly advised in the premises do hereby adopt the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Officer.

Based upon the information presented, I have caused this Final Order to be entered in this matter based upon the following:

1. The Division of Insurance asserted that the Respondent had committed a felony and did not timely report it to the Director.

2. The testimony and evidence presented by the Division substantiated the claims made by the Division. The felony conviction was supported by court records and was not disputed. Division records show no evidence that the felony was reported before the Respondent disclosed it on his producer license renewal form more than 30 days after the conviction.
3. The Respondent in this matter attended the hearing and was represented by counsel. The Respondent's oral testimony that he was coerced into a plea bargain was unsupported by extrinsic evidence and arguably irrelevant in that the merits of the conviction are not at issue. The facts in evidence were not favorable to the Respondent under the review standards of 50 Ill. Adm. Code 2403. Similarly, the Respondent's testimony that he relied upon his parole officer to deliver the felony conviction notice is also not convincing in that it is the responsibility of the producer, not the parole officer, to notify the Division.

Having reviewed the record and found no just cause to rescind the revocation, I conclude that the Order of Revocation should be sustained.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Order of Revocation against Richard Eugene Lutes is sustained.
2. Richard Eugene Lutes is assessed the cost of this hearing in the sum of \$237.50, representing the cost of court reporting fees. This amount is to be paid to the Director of Insurance within 30 days of the date of this Order.
3. This Order is final, effective immediately, and subject to the Administrative Review Law (735 ILCS 5/3-101 et seq.).

Dated: July 19, 2005

DEPARTMENT OF FINANCIAL AND
PROFESSIONAL REGULATION of the
State of Illinois; FERNANDO E. GRILLO,
SECRETARY

DIVISION OF INSURANCE

Michael T. McRaith
Michael T. McRaith
Director of Insurance

STATE OF ILLINOIS



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FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATIONS OF THE HEARING OFFICER

Now comes, James C. Rundblom, Hearing Officer in the above-captioned matter who hereby offers his Findings of Fact, Conclusions of Law and Recommendations to the Director of Insurance.

FINDINGS OF FACT

1) On March 31, 2005, Michael T. McRaith, the Director of Insurance, issued an Order of Revocation revoking the Illinois Insurance Producers License of Richard Eugene Lutes (Respondent) (Exhibit A of Hearing Officer Exhibit 1).

2) On April 28, 2005, the Division of Insurance received a Request For Hearing regarding the revocation from the Respondent's attorney Duane D. Young (Exhibit B of Hearing Officer Exhibit 1).

3) On May 19, 2005, the Director issued a Notice of Hearing granting the Respondent's request, and setting a hearing for June 16, 2005, to be held at the Department's Offices in Springfield, Illinois. (Hearing Officer Exhibit 1).

4) Joseph T. Clennon filed his appearance in this matter as counsel for the Department (Hearing Officer Exhibit 1).

5) James C. Rundblom was duly appointed as Hearing Officer in this matter on May 19, 2005 (Hearing Officer Exhibit 2).

6) The Notice of Hearing in this matter was received by the Respondent on May 20, 2005 (Hearing Officer Exhibit 3).

7) The Division of Insurance received an Entry of Appearance from Duane D. Young, the Respondent's attorney on May 27, 2005 (Hearing Officer Exhibit 4).

8) The Hearing in this matter was held as scheduled on June 16, 2005, at the Department's Springfield, Illinois offices. In attendance were James C. Rundblom, Hearing Officer; Joseph T. Clennon, attorney for the Department; Thomas Anderson, a staff examiner and witness for the Department; Richard Eugene Lutes, the Respondent; Duane Young, attorney for the Respondent, and Bruce Smith and Jayne Rott, who identified themselves as witnesses for the Respondent (Tr. 4).

9) The purpose of the Hearing was to determine the eligibility of the Respondent to hold an Illinois Insurance Producer License, and to determine whether the Director's Order of Revocation revoking the Respondent's Illinois insurance producers license should stand.

10) Thomas Anderson, a Staff Examiner for the Division testified on direct examination as follows:

a) The Respondent admitted to having been convicted of a felony on his renewal application for an Illinois insurance producer license (Tr. 15 and Division's Exhibit A).

b) Documentation was obtained from the Whiteside County Circuit Clerk's Office showing that on or about May 27, 2004 the Respondent had been convicted of aggravated battery of an individual over 60 years old (Tr. 17 and Division Exhibit B).

c) The Respondent had completed all of the requirements under the Circuit Court order except approximately seventeen months of probation (Tr.19).

11) Examiner Anderson testified on cross-examination as follows:

a) When conducting his investigation of the Respondent's felony conviction he did not speak with anyone in Whiteside County other than Susan in the Circuit Clerk's Office (Tr. 29).

b) He didn't think that the Division ever received any complaint from any consumer relating to the matters and things addressed in the revocation (Tr. 30).

c) The phone log in the investigatory file showed that neither he nor anyone else from the Division spoke with the Respondent during the investigation, and he had no personal recollection of ever asking or talking to the Respondent in person or by telephone (Tr. 30, 31).

d) He never asked the Respondent if he had ever mailed or by any agency mailed a copy of the conviction to the Division, and he only knew that he never received a copy of the conviction (Tr. 31).

e) The Respondent was forthright regarding the conviction when the renewal was sent in, and never refused to give him information (Tr. 32).

f) He determined that the felony occurred in Whiteside County when the Division received an email that the Respondent had been arrested again (Tr. 32).

g) That there were two separate incidents of assault and the Respondent was convicted of a felony for aggravated assault (Tr. 32).

h) He did not receive the email in that it went to Kelly Kruger (Tr. 33).

i) The arrest was for prior charges (Tr. 33).

j) He never saw any notification that the Respondent had contacted the Division within thirty days of the judgment of the charges (Tr. 34).

k) That the second thing he did was contact the Whiteside County Circuit Clerk's Office to obtain felony conviction papers, and write a report up that was forwarded to the Director (Tr.34).

l) The Respondent had complied with everything in the court order except completing probation (Tr. 35).

12) Jayne Eileen Rott, a witness for the Respondent, testified on direct examination as follows:

a) She was the Respondent's girlfriend who has known him for 13 years, and resides with him (Tr. 38).

b) After the Respondent was released from jail they resided at the Crystal Lakes Motel in Rock Falls, Whiteside County (Tr. 38).

c) The Respondent had to reside in Whiteside County for one month as a condition of his probation (Tr. 38).

d) During such time the Respondent was visited by his probation officer Jeffrey Staabs (Tr. 39).

e) She was present when the Respondent discussed with Mr. Staabs the need to report the felony conviction to the Division of Insurance (Tr. 39).

f) The Respondent had prepared a letter that he was going to send off. He showed the letter to Staabs, who had asked for the letter and said he would send it off, and the Respondent gave Staabs the letter (Tr. 39, 40).

g) She understood that the Respondent would have gotten into trouble if the letter had not been given to his parole officer (Tr. 41).

13) Richard Eugene Lutes, the Respondent, testified on his own behalf as follows:

a) He is fifty-five and it was his thirty-first year as a licensed insurance producer (Tr. 42).

b) He holds licenses for life, accident and health insurance (Tr. 42).

c) He kept his licenses up, but had not produced for all those years (Tr. 42, 43).

d) He had been arrested in 2003, put up 10% of \$250,000.00 bail, and was released (Tr. 43).

e) Thereafter he was incarcerated again for five months on a second charge, and experienced "A lot of hell." while in prison (Tr. 43, 44).

f) None of the charges for which he was jailed were ever proven except that he pled guilty to aggravated battery as part of a plea agreement in order to get out of prison (Tr. 44).

g) He has complied with all the terms and conditions of his probation (Tr. 44).

h) He understood at the time of the plea that he would have to report the felony to the Division of Insurance (Tr. 44).

i) He prepared the report by writing it on a piece of paper. He then gave the report to Jeff Staabs, who had asked for it, and had assured him that it would get there. The Respondent thought it was all taken care of. He had sent in the paperwork of his conviction (Tr. 45, 46).

j) That he had to report to his probation officer two times a month, pay probation fees, do what his probation officer said, and that continues (Tr. 47).

k) There was no truth in the original charges brought against him, had never met the person who brought the charges, and had never called her (Tr. 47).

l) He only saw what they showed him on video tape. He never saw the lady and she wasn't even positive about him (Tr. 47).

m) He pled guilty because he could not get bail, and he thought he was pleading to battery, not aggravated battery (Tr. 48).

n) He paid all his fines, fees, anything that the Department asked, and has responded to any other inquiry the Department ever made of him (Tr. 48).

14) On cross-examination the Respondent testified as follows:

a) He did not know the lady who brought the second charge, and that he knew the lady who brought the first charge and she had been found incompetent (Tr. 49).

b) He had a complaint filed against him in Dixon, Illinois by a lady who spent a few years in the Dixon Mental Health Center (Tr. 50).

c) He was familiar with Special Agent Paula Vercillo and her report (Tr. 50).

d) He was familiar with the charges put against him that were listed in the report (Tr. 54).

e) He knew some of the complainants listed in the report, some of who were customers of his, and did not know and never had contact with others (Tr. 54, 55).

f) The complainants did not go to the police departments to complain. Paula Vercillo went to the complainant's houses to obtain the information for her report. She also put his picture on the front page of a paper for two weeks in a row, and put out fliers because he told her what he thought of her (Tr. 56).

g) When asked what he told Officer Vercillo when he told her what he thought of her the Respondent said "I called her bitch three times in front of her fellow officers, and she is." (Tr. 56).

h) He had come in contact with the customers by signing them up for the Circuit Breaker program concerning prescription drugs for seniors (Tr. 57).

i) He does not report to an office for the program, and that he picked up the forms for the program from his congressman's office. He decided it would be a good lead program, and that he could help a lot of people. Over 95% of the people he signed up he did not sell insurance to (Tr. 58).

j) He did not obtain or need a solicitor's license for the program (Tr. 58).

k) He bought the names of seniors through a lead company like Kramer Senior leads out of Dallas Texas (Tr. 59).

l) He could ask for various demographics, but just asked for anybody over 65 (Tr. 59).

m) He targeted elderly people and went to their homes to solicit for the Circuit Breaker program (Tr. 59).

n) The Circuit Breaker program is a State of Illinois program, but he did not know who it was administered through (Tr. 60).

o) He asks seniors about their prescription drugs and if they are getting any assistance (Tr. 60).

p) He is often invited and enters into their homes (Tr. 60).

q) He has two probation officers, and his probation is over in November of 2006 (Tr. 61).

r) The probation officer who he reports to knew he was in Springfield (Tr. 61).

s) He called his probation officer (leaving phone messages) for a period of 30 days after receiving a letter from the Division and explained that he needed his calls returned in that the Division had sent the Respondent a letter that they did not receive the (felony conviction) report (Tr. 61).

t) When the probation officer finally returned his call the probation officer denied responsibility for sending the report (Tr. 62).

u) He agreed with the Division's summarization that he was originally arrested by reason of an incompetent person, that the State Police trumped up charges and put his picture in the newspaper, and that his probation officer is the reason that his paperwork was not submitted to the Division of Insurance (Tr. 62).

v) He also agreed that he was not responsible for any of his predicament (Tr. 62, 63).

15) On redirect examination the Respondent testified as follows:

a) He reacted negatively to Officer Vercillo because she belittled him when he was chained up and handcuffed (Tr. 63).

b) When questioned about the truth of Officer Verillo's report the Respondnt said that he didn't know a lot of those people, and that "She was on a witch-hunt." (Tr. 64).

c) His name was on the front page of the paper for two weeks and fliers that Vercillo had sent out in every paper that went around. The fliers stated "Have you seen this man? If so, call this number." (Tr. 64).

- d) The Respondent's arrest was on Channel 8 News for a week (Tr. 64).
 - e) The charges for the first arrest were dismissed (Tr. 64).
 - f) When he informed his other probation officer about the (felony notice letter) the other officer told him that he did not send letters in, and that he did not know why it was not sent (Tr. 65).
 - g) He had no prior felony or misdemeanor conviction, but did have one traffic ticket (Tr. 66)
- 16) On examination by the Hearing Officer the Respondent testified as follows:
- a) He did not make copies of the (felony notice) papers because he did not figure he had to. The Respondent gave no indication that the report contained certified copies of the court records (Tr. 66).
 - a) He wrote the notice down on a yellow legal pad and gave it to his probation officer because he asked for it, and called him the same night (Tr. 67)
 - b) He did not ask his probation officer to testify on his behalf because he figured it was up to the Division to ask him (Tr. 67).

17) On redirect examination the Respondent testified as follows:

- a) His probation officer was going to save face, and indicated to the Respondent over the phone that he wasn't going to do anything to help the Respondent or jeopardize the probation officer's position (Tr. 68).

After closing arguments the Respondent also indicated that he has not solicited business for almost two years, and that if granted his license he would not do so again until November 2006, after he had completed probation (Tr. 73).

CONCLUSIONS OF LAW

Based upon the above-stated Findings of Fact, the Hearing Officer offers the following Conclusions of Law to the Director of Insurance:

1. The Director of Insurance has jurisdiction over the subject matter and the parties to this proceeding pursuant to Sections 401, 402, 403, 500-70, and 500-95 of the Illinois Insurance Code (215 ILCS 5/401, 5/402, 5/403, 5/500-70, 5/500-95).

2. James C. Rundblom was duly appointed as Hearing Officer in this matter pursuant to Section 402 of the Illinois Insurance Code (215 ILCS 5/402).

3. The purpose of the Hearing was to determine the eligibility of the Respondent to hold an Illinois Insurance Producer License, and to determine whether the Director's Order of Revocation should stand.

4. Section 500-70(a)(6) of the Illinois Insurance Code provides, in part, as follows:

(a) The Director may place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with this Section or take any combination of actions, for any one or more of the following causes:

(6) having been convicted of a felony

5. Aggravated battery of an individual of 60 years or older is a Class 3 felony [215 ILCS 5/12-4(e)].

6. The Respondent, having been convicted of aggravated battery of a person 60 years or older was convicted of a felony within the meaning of Section 500-70(a)(6) of the Illinois Insurance Code.

7. Section 2403.30 of Title 50 to the Illinois Administrative Code provides as follows:

Section 500-70 of the Illinois Insurance Code allows the Director to place on probation, suspend, revoke, or refuse to issue an insurance producer's license, levy a civil penalty, or take any combination of the preceding actions when the producer has been convicted of a felony [215 ILCS 5/500-70(a)(6)]. When so reviewing producer licenses or license applications involving producers who have been convicted of a felony, the Director shall consider the following factors in determining the appropriate action:

a) Nature and Severity of the Criminal Activity.

Violent criminals or sex offenders may be denied producer license privileges, as well as those convicted of crimes which are insurance related and/or involve untrustworthiness;

b) Time Elapsed Since the Prior Criminal Conduct.

The greater the time period since the criminal conduct of the applicant or producer, the more leniency that is appropriate. When making this determination, the duration since the criminal activity should be proportionate to the severity of the criminal conduct;

c) Absence of Additional Criminal Conduct Since the Reported Felony.

Continued criminal conduct of a lesser or greater nature, by the applicant or producer, should not be tolerated;

- d) Multiple Offenses or Pattern of Criminal Conduct.
Those applicants and producers who engaged in repeated criminal conduct are a greater risk to the public;
- e) Restitution.
Payment to the victim of the felony by the applicant or producer is necessary to both satisfy the court order and to demonstrate penitence;
- f) Proper Disclosure.
Failure of the applicant or producer to fully cooperate or properly report the criminal activity to the Department does not reflect favorably on the applicant's character;
- g) Successful Completion of Sentence and Probationary Period.
The applicant's or producer's debt to society must be fully satisfied before he or she is granted any further privileges;
- h) Rehabilitation.
Post-conviction community service or charitable activity by the applicant or producer may serve as evidence of rehabilitation;
- i) Nature of Work Performed by the Applicant or Producer.
There is less risk when the work to be performed does not involve money transactions or direct contact with the public;
- j) Any Other Facts or Circumstances Deemed Relevant by the Director.
Letters of recommendation addressed to the Director, and attesting to the character and reputation of the applicant or producer, may be considered by the Director.

8. There is no dispute that the Respondent was convicted of a felony. The Respondent's argument that he was coerced into a plea bargain is based solely upon his testimony, and unsupported by extrinsic evidence. Moreover, such contentions are of limited relevance given that the merits of the conviction are not at issue. Applying the standards of Section 2403.30 of Title 50 to the Illinois Administrative Code (50 Il. Adm. Code 2403.30), the factors weighing against the Respondent are: the violent nature of the crime for which he was convicted; the relatively short time that has elapsed since the conviction (13 months); incomplete probation; lack of rehabilitation as evidenced by his animosity towards the police and failure to acknowledge responsibility for his predicament; and the nature of the work performed by the Respondent. There were no character witnesses. The record shows that the Respondent's insurance business involved sales to seniors at their homes when the felony was for aggravated battery against a person 60 years or older. With respect to the other standards of Section 2403.30, the absence of additional criminal conduct by the Respondent should be expected while he is still on probation, as should his payment of fines and penalties. No restitution was ordered, so it is not a factor in this case.


9. Disclosure of the felony did not occur until the renewal application was sent to the Division, and is also at issue. The fact that the Respondent's probation officer did not appear or submit an affidavit to corroborate the Respondent's testimony regarding the failure to deliver the felony notice letter is telling. Further, nowhere did the Respondent show that he attempted to provide the Director with a copy of the judgment, probation or commitment order as required by Section 500-95 of the Illinois Insurance Code, so if it had been received it still would have been deficient. In addition, Respondent's total reliance on his probation officer, and failure to follow up with the Division to insure that the notice was in fact delivered, is indicative of incompetence under Section 500-70(a)(8).

RECOMMENDATIONS

The evidence presented in this matter shows that the Respondent was convicted of a felony, and failed to deliver proper notice of that felony to the Director. Application of the felony review standards in Section 2403.30 of Title 50 to the Illinois Insurance Code supports the revocation. The Hearing Officer recommends that the Order of Revocation be sustained.

July 7, 2005

Respectfully submitted,

A handwritten signature in cursive script, reading "James C. Rundblom". The signature is written in dark ink and is positioned above a horizontal line.

James C. Rundblom
Hearing Officer